

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

OAH No. L 2006120437

JACOB M.,

Claimant,

vs.

TRI COUNTIES REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on January 12, 2007, in Santa Barbara, California. Jacob M. (Claimant) was represented by his parents, John M. and Shirley M., who are Claimant's authorized representatives.¹ Tri Counties Regional Center (Service Agency or TCRC) was represented by Fran Jorgensen, Assistant Director of Consumer Services, and Pamela Crabaugh, Consumer Services Manager.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on January 12, 2007.

ISSUE

The parties agreed that the sole issue to be decided is as follows:

Should the Service Agency provide funding for the services of Dr. Joanne Singer to assess Claimant at school?

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¹ Claimant's and his parents' surnames are omitted throughout this Decision to protect their privacy.

FACTUAL FINDINGS

1. Claimant is a 7-year-old male who is a client of the Service Agency under a qualifying diagnosis undisclosed by the evidence. He lives with his mother and father. (Exhibits 1 and A; Testimony of Rosemary Rice.)
2. Claimant currently attends first grade at Canalino Elementary School (Canalino), a public school in the Carpenteria Unified School District (CUSD). Prior to attending Canalino, Claimant attended kindergarten at Carpenteria Christian School (CCS), a private school within CUSD. (Exhibits 1 and A; Testimony of Ruth Rech.)
3. In October of 2005, Ruth Rech (Rech), Coordinator of Special Education with CUSD, spoke with Claimant's mother, who informed Rech that Claimant's teachers at CCS believed Claimant was not progressing academically. She requested that CUSD perform an assessment. An assessment plan was signed in March 2006, and a full speech and language assessment was conducted. (Testimony of Rech.)
4. On June 7, 2006, CUSD and Claimant's parents held an Individualized Education Program (IEP) meeting. At that IEP meeting, CUSD's assessment and information from outside specialists were considered. Claimant was listed as eligible for special education services under the category of "Language/Speech Impaired." His recommended program included speech and language education four times per week for 20 minute sessions and work with a resource specialist four times per week. The parties agreed that more testing was needed, so Claimant's recommended program also included reading and mathematics diagnostic placement. These services were scheduled to commence on September 1, 2006, and Claimant was placed at Canalino. (Exhibit A; Testimony of Rech.)
5. On October 19, 2006 another IEP Meeting took place, after Claimant began attending Canalino. By the October 19, 2006 IEP meeting, Claimant had undergone assessments of his listening skills (assessed by the IEP team); articulation and communication skills (assessed by the speech and language specialist); mathematics, writing and reading skills (assessed by the general education teacher and resource specialist); and motor abilities and recreation (assessed by the adapted physical education teacher). His recommended program included speech and language education 14 times per month in 20 minute sessions, work with a resource specialist 14 times per month in 60 minute sessions, and adapted physical education once a week for 30 minutes. Additionally, an assistant would be assigned to the playground to help facilitate Claimant's social interaction. All of these services were scheduled to begin September 9, 2006. Claimant's parents were in agreement with the recommended program, but wanted to scrutinize some of the goals that were addressed. (Exhibit A.)

6. Claimant's Service Coordinator, Rosemary Rice (Rice), met with Claimant's parents in the spring of 2006 and participated in the 2006 IEP meeting prior to Claimant attending Canalino. In October of 2006, Claimant's parents informed Rice that they wanted to retain the services of Dr. Joanne Singer to provide an "outside" assessment of Claimant's needs in the classroom and to ensure that the educational services he was receiving were appropriate. Rice informed Claimant's parents that the Service Agency did not fund such assessments and that she understood that it was something the school typically provided. (Testimony of Rice.)

7. On November 27, 2006, the Service Agency denied Claimant's request for funding of the "Educational Services of Dr. Joanne Singer." In its Notice of Proposed Action, the reason for the Service Agency's denial was that TCRC "considers [CUSD] and Santa Barbara Education office as the generic resources for the Special Education Services." (Exhibit 1.)

8. Claimant filed a Fair Hearing Request, contesting the Service Agency's denial of funding for the "services of Dr. Joanne Singer to observe [Claimant] at school in Resource Room, Speech & Language and regular classroom to accurately determine his needs." (Exhibit 1.)

9. On December 5, 2006, Rech and Claimant's parents held a further (and current) IEP meeting. At the end of the meeting, Claimant's father informed Rech that they had asked TCRC to pay for Dr. Joanne Singer to observe Claimant in his regular and speech & language programs, but that TCRC had denied funding. Claimant's parents requested that CUSD provide funding for Dr. Singer's assessment, the purpose of which Rech believed was to determine whether CUSD was following the appropriate program for Claimant. (Testimony of Rech.)

10. On December 8, 2006, CUSD sent Claimant's parents a letter denying funding for the "Educational Services of Dr. Joanne Singer." Claimant did not request a due process hearing to contest CUSD's denial.

11. At the fair hearing, the Service Agency maintained that it was not the proper entity to fund Dr. Singer's assessment because it was an educational assessment which is the responsibility of the education agency. The Service Agency noted that regional centers are statutorily prevented from paying for services which are the responsibility of a generic agency.

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LEGAL CONCLUSIONS

1. Claimant's appeal of the Service Agency's denial of funding for Dr. Singer's educational assessment is denied. (Factual Findings 1 through 11.)

2. Where a change in services is sought, the party seeking the change has the burden of proving that a change in services is necessary to meet the consumer's needs or that the consumer no longer needs the services. (See Evidence Code sections 115 and 500.) Here, Claimant seeks to have the Service Agency fund a previously unfunded service/assessment, and he therefore has the burden of proof. Claimant has not met his burden of proof.

3. The Service Agency is required to secure services and supports that: meet the individual needs and preferences of consumers (Welf. & Inst. Code §§ 4501 and 4646, subdivision (a).); support their integration into the mainstream life of the community (Welf. & Inst. Code §§ 4501 and 4646, subdivision (a).); "foster the developmental potential of the person" (Welf. & Inst. Code § 4502, subdivision (a).); and "maximize opportunities and choices for living, working, learning and recreating in the community" (Welf. & Inst. Code § 4640.7, subdivision (a).).

4. However, the Service Agency maintains that it is not the proper agency to fund the educational assessment of Dr. Singer. The Service Agency contends that, pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), it is prohibited from funding services which another generic source, here CUSD, is required to pay. This argument is supported by the evidence presented at the fair hearing.

5. Pursuant to Welfare and Institutions Code section 4648, subdivision (a)(8), despite a consumer's entitlement to services and supports, "[r]egional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services."

6. The Service Agency's funding of Dr. Singer's educational assessment would supplant a generic source, since CUSD would be the entity responsible for funding such an educational assessment. Consequently, the Service Agency is not required to fund Dr. Singer's educational assessment.

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ORDER

The Service Agency's denial of funding for the services of Dr. Joanne Singer to assess Claimant at school is sustained. Claimant's appeal is denied.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: January 23, 2007

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings